

EXHIBIT YY

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

DENISE PAYNE,

Plaintiff,

v.

CORNELL UNIVERSITY,

Defendant.

**ATTORNEY DECLARATION OF
ADAM G. PENCE**

Civil Action No. 18-cv-1442
(GTS/ML)

ADAM G. PENCE declares under penalty of perjury, pursuant to 28 U.S.C. § 1746, that the following is true and correct:

1. I am an attorney at law duly licensed to practice in the State of New York, and I am admitted to appear before the United States District Court for the Northern District of New York. I am an employee of Defendant Cornell University ("Cornell") and am one of the attorneys of record for Cornell in this matter. I have knowledge of the facts and procedural history set forth in this declaration based upon my personal experience and my review of case files.

2. I make this declaration in support of Cornell's motion for summary judgment in this matter.

3. Plaintiff Denise Payne ("Payne") commenced this action on November 7, 2018 by filing a Summons with Notice in state court. Cornell responded with a demand for service of the complaint. Because of the federal questions referred to in the Notice, Cornell also removed the action to this Court and demanded service of a complaint. *See* Dkt. No. 1.

4. Payne filed her complaint on January 2, 2019. *See* Dkt. No. 2. A true and complete copy of this complaint is attached as Exhibit A to the Statement of Material Facts filed in support of Cornell's motion for summary judgment ("Statement of Material Facts").

5. Cornell filed its Answer on March 4, 2019. *See* Dkt. No. 8. A true and complete copy of this answer is attached as Exhibit B to the Statement of Material Facts.

6. Discovery has been completed and Cornell's motion for summary judgment is being filed in accordance with the Court's Scheduling Order. *See* Dkt. No. 12.

7. By way of background, on March 19, 2018, Payne filed a Charge of Discrimination with the Equal Employment Opportunity Commission ("EEOC"). Her charge was cross-filed with the New York State Division of Human Rights. A true and complete copy of the EEOC Notice of Charge of Discrimination is attached as Exhibit C to the Statement of Material Facts.

8. On August 13, 2018, the EEOC issued a Dismissal and Notice of Rights following its investigation of the Charge. A true and complete copy of the Dismissal and Notice of Rights is attached as Exhibit D to the Statement of Material Facts.

9. In response to the EEOC's request for information during its investigation, Cornell provided 588 pages of documentation regarding University policies and the administration of these policies to benefit Payne after her cancer diagnosis. Included in the materials provided to the EEOC were several University policies:

- a. Policy 6.9 – Time Away from Work: Medical Leaves for Nonacademic Staff;
- b. Policy 6.13 – Disability Accommodation Process for Faculty and Staff;
- c. Policy 6.6.13 – Flexibility in the Workplace

A true and complete copy of the version of Policy 6.9 effective at the time of the EEOC Response is attached as Exhibit E to the Statement of Material Facts. A true and complete copy of University Policy 6.13 is attached as Exhibit F to the Statement of Material Facts. A true and complete copy of University Policy 6.6.13 is attached as Exhibit G to the Statement of Material Facts.

10. On September 4, 2019, counsel for Cornell deposed Denise Payne (“Payne Dep.”). A true and complete copy of her deposition transcript, including her signature page and errata sheet, is attached as Exhibit H to the Statement of Material Facts.

11. During the course of Payne’s deposition, she reviewed and provided testimony about numerous documents that were entered into the record as deposition exhibits. These documents included Policy 6.6.13 (Payne Dep. Ex. 2) and Policy 6.13 (Payne Dep. Ex. 3), referenced above as Exhibits G and F to the Statement of Material Facts. For its summary judgment motion, Cornell has included all the deposition exhibits, as labeled during Payne’s deposition, with the exception of Exhibits 7 and 10, as outlined below.

12. A true and complete copy of the First Flexible Work Arrangement-Agreement Form, dated February 2, 2017, which was Payne Dep. Ex. 1, is attached as Exhibit I to the Statement of Material Facts.

13. A true and complete copy of the Second Flexible Work Arrangement-Agreement Form, dated May 16, 2017, which was Payne Dep. Ex. 4, is attached as Exhibit J to the Statement of Material Facts.

14. A true and complete copy of the Third Flexible Work Arrangement-Agreement Form, dated August 28, 2017, which was Payne Dep. Ex. 5, is attached as Exhibit K to the Statement of Material Facts.

15. A true and complete copy of a letter to Payne from Cornell Medical Leaves Administration Representative Jill Tubbs (“Tubbs”), dated August 2, 2017, which was Payne Dep. Ex. 6, is attached as Exhibit L to the Statement of Material Facts.

16. A true and complete copy of an email exchange between Cornell Human Resources (“HR”) representative Julie Weaver (“Weaver”) and Payne, dated September 21-22, 2016, which was Payne Dep. Ex. 8, is attached as Exhibit M to the Statement of Material Facts.

17. A true and complete copy of a letter to Payne from HR Director Katherine Doxey (“Doxey”), dated September 23, 2016, which was Payne Dep. Ex. 9, is attached as Exhibit N to the Statement of Material Facts.

18. A true and complete copy of an email exchange between Tubbs and Payne, dated October 3, 2016, labeled with Payne’s document production number P000241, which was Payne Dep. Ex. 11, is attached as Exhibit O to the Statement of Material Facts.

19. A true and complete copy of email exchanges between Weaver, Tubbs, and Payne and between Lindsay and Payne, dated July 5, 2017, labeled with Payne’s document production numbers P000245-000248, which was Payne Dep. Ex. 12, is attached as Exhibit P to the Statement of Material Facts.

20. A true and complete copy of an email from Weaver to Payne, dated July 6, 2017, which was Payne Dep. Ex. 13, is attached as Exhibit Q to the Statement of Material Facts.

21. A true and complete copy of an email from Tubbs to Weaver, copying Payne, dated July 18, 2017, which was Payne Dep. Ex. 14, is attached as Exhibit R to the Statement of Material Facts.

22. A true and complete copy of an email from Payne to Tubbs, dated February 22, 2018, labeled with Payne’s document production number P000261, which was Payne Dep. Ex. 15, is attached as Exhibit S to the Statement of Material Facts.

23. A true and complete copy of a letter to Payne from Doxey, dated July 31, 2017, labeled with Payne's document production number P000111, which was Payne Dep. Ex. 16, is attached as Exhibit T to the Statement of Material Facts.

24. On December 16, 2019, HR Director Katherine Doxey was deposed by counsel for Payne ("Doxey Dep."). A true and complete copy of her deposition transcript, including her signature page and errata sheet, is attached as Exhibit U to the Statement of Material Facts.

25. During the course of Doxey's deposition, she reviewed and provided testimony about numerous materials, including some documents marked during Payne's deposition and two documents marked as Doxey Dep. Exhibits. For its summary judgment motion, Cornell has included one of these exhibits, as outlined below.

26. A true and complete copy of an email from Payne to Doxey, dated June 20, 2016, labeled with Payne's document production number P000122 (Doxey Dep. Ex. D), is attached as Exhibit V to the Statement of Material Facts.

27. On December 3, 2019, Cornell employee Lucinda Allen ("Allen") was deposed by Payne's counsel ("Allen Dep."). A true and complete copy of her deposition transcript, including her signature page and errata sheet, is attached as Exhibit W to the Statement of Material Facts. Three exhibits were marked during the Allen Dep., but none of them are filed with Cornell's motion.

28. A true and complete copy of Plaintiff's Amended Rule 26(a)(1) Initial Disclosures, dated April 17, 2019, is attached as Exhibit X to the Statement of Material Facts.

29. A true and complete copy of Plaintiff's Responses and Objections to Defendants' First Set of Interrogatories, dated June 27, 2019, is attached as Exhibit Y to the Statement of Material Facts.

30. As stated in Paragraph 9 above, in response to the EEOC's request for information during its investigation, Cornell provided 588 pages of documentation. Payne did not request any documents from Cornell during this litigation, so Cornell is filing as part of its motion relevant documentation and communications from its response to the EEOC's request for information. These materials included the following:

- a. An August 14, 2015 letter from Margaret Shackell-Dowell, Assistant Director of the Cornell Business Simulation Lab ("BSL"), to Payne (Bates Number 447). A true and complete copy of this letter is attached as Exhibit AA to the Statement of Material Facts.
- b. A June 22, 2016 email from Payne to Manoj Thomas, Director of BSL (Bates Number 451). A true and complete copy of her email to Thomas is attached as Exhibit BB to the Statement of Material Facts.
- c. A June 23, 2016 email from Payne to Shackell-Dowell and Thomas (Bates Number 459). A true and complete copy of her email is attached as Exhibit CC to the Statement of Material Facts.
- d. A June 29, 2016 email from Payne to Doxey, copying Shackell-Dowell (Bates Numbers 471-472). A true and complete copy of this email, and Shackell-Dowell's response, is attached as Exhibit DD to the Statement of Material Facts.
- e. A February 27, 2017 email exchange between Weaver and Lindsay, discussing earlier communications between Lindsay and Payne (Bates Number 484-485). A true and complete copy of this email exchange is attached as Exhibit GG to the Statement of Material Facts.
- f. A June 15, 2017 email exchange among former Cornell employee Tammy Lindsay, Weaver, Allen, and Doxey (Bates Numbers 497-498). A true and complete copy of this email exchange is attached as Exhibit JJ to the Statement of Material Facts.
- g. A September 5, 2017 email exchange between Tubbs and Payne (Bates Number 045). A true and complete copy of this email exchange is attached as Exhibit NN to the Statement of Material Facts.
- h. A document entitled "Justification to Eliminate Business Analytics Department in the SC Johnson College of Business" (Bates Number 512-515). A true copy of this document is attached as Exhibit RR to the Statement of Material Facts. Cornell has omitted the supporting documentation, which included confidential employment information from individual personnel files for other Cornell employees.

- i. A December 1, 2017 letter from Cornell Associate Dean Laura Syer to Payne (Bates Numbers 539-40). A true and complete copy of this letter is attached as Exhibit SS to the Statement of Material Facts.
- j. A September 21, 2016 email from Weaver to a Johnson College of Business email distribution list (Bates Number 477). A true and complete copy of this email is attached as Exhibit TT to the Statement of Material Facts.

31. During the course of discovery, Payne produced documents in response to Cornell's discovery requests. These materials included the following:


- a. An email exchange between Weaver and Allen, forwarded to Payne, dated January 10-12, 2017 (P000528-000529). A true and complete copy of this email exchange is attached as Exhibit FF to the Statement of Material Facts.
- b. Two email exchanges between Lindsay and Payne, dated May 9, 2017 (P000459-000460, P000506). True and complete copies of these email exchanges are attached, collectively, as Exhibit HH to the Statement of Material Facts.
- c. Email exchanges between Allen and Payne, dated May 5 and May 8, 2017 (P000555), and between Lindsay and Payne, dated May 23, 2017 (P000598). True and complete copies of these email exchanges are attached, collectively, as Exhibit II to the Statement of Material Facts.
- d. A copy of an email exchange between Lindsay and Payne (and others), dated July 5-July 6, 2017 (P000279-000281). A true and complete copy of this email exchange is attached as Exhibit KK to the Statement of Material Facts.
- e. A copy of an email exchange between Allen and Payne, dated July 7, 2017 (P000469-000470). A true and complete copy of this email exchange is attached as Exhibit LL to the Statement of Material Facts.
- f. A copy of an email exchange among Weaver, Doxey, Lindsay, Allen, and Payne, dated August 16, 2017 (P000269-000270). A true and complete copy of this email exchange is attached as Exhibit MM to the Statement of Material Facts.
- g. A copy of an email exchange between Weaver and Payne, dated August 1, 2017-September 12, 2017 (P000691-000694). A true and complete copy of this email exchange is attached as Exhibit OO to the Statement of Material Facts.
- h. A copy of an email exchange among Doxey, Weaver, Payne, and Syer, dated October 10-13, 2017 (P000872-000873). A true and complete copy of this email exchange is attached as Exhibit PP to the Statement of Material Facts.
- i. A copy of an email exchange among Doxey, Weaver, Syer, and Payne, dated November 6-8, 2017 (P000237-000238). A true and complete copy of this email exchange is attached as Exhibit QQ to the Statement of Material Facts.

- j. An email exchange between Payne and Cornell Assistant Dean of Academic Affairs, Beth Fox, dated January 30-February 7, 2018 (P002137). A true and complete copy of this e-mail exchange is attached as Exhibit UU to the Statement of Material Facts.

32. In support of Cornell's motion for summary judgment, Julie Weaver has executed a declaration. A true and complete copy of her declaration is attached as Exhibit WW to the Statement of Material Facts.

33. In support of Cornell's motion for summary judgment, Katherine Doxey has executed a declaration. A true and complete copy of her declaration is attached as Exhibit XX to the Statement of Material Facts.

Dated: Ithaca, New York
March 2, 2020



Adam G. Pence